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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/781,582      | 02/12/2001  | John P. Rebhorn      | 5515USA             | 9717             |

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 04/24/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                          |
|------------------------------|-----------------|--------------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)             |
|                              | 09/781,582      | REBHORN ET AL. <i>TG</i> |
|                              | Examiner        | Art Unit                 |
|                              | Robert Madsen   | 1761                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-46 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 14, 16, 17, 19, 22-24, 30, 32, 33, and 35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Simmons (US 4148417).

Regarding claims 1-9, 16, 17, 19, 22-24, 32-33, 35, See Figure 2, Column 1, lines 1-31, Column 2, line 45 to Column 3, line 37.

Regarding claims 14 and 30, see Column 4, lines 3-13.

Claims 38, 44, 45, 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons (US 4148417) as evident by Binter (US 5735422).

Regarding claim 38, Simmons teaches providing a first and second compartment, assembled side-by side, each tapering at an upper portion to respectively form a spout and mouth, which abut each other, and covering the mouth and covering the spout. Simmons further teaches discharging the consumables from the compartments. (See Figure 2, Column 2, line 45 to Column 3, 39, Column 1, lines 1-19) Simmons inherently teaches filling dispensing a first consumable *into* a first compartment and second consumable *into* a second compartment since Simmons teaches dispensing a first

consumable *out of* a first compartment and second consumable *out of* a second compartment . Without dispensing consumables into the compartments Simmons could not have dispensed the consumables from the compartments, as evident by Binter who also teaches molded plastic dispensing containers comprising two separate compartments, the first component is dispensed into the first compartment and the second component is dispensed into the second compartment (Column 1, lines 12-31, Column 3, lines 48-65)

Regarding claim 44, assembly includes a shrink label (Column 4, lines 14-24).

Regarding claim 45, Simmons teaches covering the second compartment includes selectively securing a cap over the mouth and spout since the cap (item 57 in figure 2) comprises covering for both mouth and spout.

Regarding claim 46, Simmons teaches the spout and mouth pour region substantially centered (Figure 2).

Claims 1-9, 16,17,19,22-24,32-33,35, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Maines (US5921440)

See Figure 1,2, Abstract, (Column 3, lines 15-55).

Claims 1-12, 16,17,19,22-28,32,33, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Ness (US 5588561)

Regarding claims 1-12, 19, 22-28, 35Ness shows two arcuate side by side compartments (items 16,18 of Figure 3) holding foods , as recited in claim 35, wherein

the upper tapered section (i.e. threading of 24 in Figure 3) forms a concave mouth (upper portion of 18) which abuts and wraps around a convex spout (upper portion of 16), as recited in claims 1-12,22,25,26,28, one of which is substantially centered as recited in claim 22 (i.e. the spout), and the spout and mouth a circular poring region, as recited in claims 23 and 24(Abstract, Figure 3). Furthermore, the compartments may be secured together as recited in claims 19,22,35 (Column 4, line 55 to Column 5, line 2).

Regarding claims 16,17,32,33, Ness alternatively teaches a cap that seals the mouth and spout together (Feature 30 of Cap 10 of Figure 1 seals both).

Claims 1-9,10,16-24,32-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Ness (US 5753289).

Regarding claims 1-9,18-24,34-37Ness teaches side by side cereal compartment (i.e. item 16) and milk compartment (i.e. item18) wherein both compartments, which may be secured to one another as recited in claims 19,22, and 35, have an arcuate exterior surface and taper at the upper portions (i.e. note the threaded portion 24 of Figure 3 is "tapered" from the rest of the body) to form a mouth and spout, for cereal and milk respectively, as recited in claims 1-9,18-21,22,25,34,35,36,37, wherein the spout is substantially centered as recited in claim 22 (i.e. the spout),and the spout and mouth form a circular poring region, as recited in claims 23 and 24(Figures 1 and 3,Column 4, lines 8-39, 53-67).

Regarding claim 10, the spout (item 18 )does wraps *about* the mouth.

Regarding claims 16,17,32,33, in one embodiment Ness teaches a cap that seals the mouth and spout together (Feature 30 of Cap 10 of Figure 1 seals both).

Claims 38-40,42,45,46 are rejected under 35 U.S.C. 102(b) as being anticipated by Ness (US 5753289).

Regarding claims 38,39,42,45,46 Ness teaches providing a first and second compartment (which may include dry and liquid products, as recited in claim 42), assembled to one another in a side-by side arrangement, each tapering at an upper portion to respectively form a spout and mouth, which abut each other, filling the first and second compartments (i.e. the second and first compartment are assembled before dispensing the second consumable product as recited in claim 39) and covering the centered mouth and the spout with a cap as recited in claims 45 and 46 (items 10 and 30 (Figures 1 and 3,Column 2, lines 17-27, Column 4, lines 8-39, 53-67).

Regarding claim 40, alternatively, Ness teaches the compartments may be filled and stored separately, assembled and then capped, which would include assembling the second compartment to the first after dispensing (Column 5, lines 49-65).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons (US 4148417) as applied to claims 1 and 22 above, in view of Stegath (US 1363064).

Simmons teaches the bottoms are aligned, but is silent in teaching the spout is shorter. However, Stegath who also teaches two compartment viscous liquid dispensers assembled together, is relied on as evidence of the conventionality of placing a spout and mouth either at equal heights (i.e. Figure 7) or with the spout shorter than the mouth (i.e. Figure 1). Therefore, to select any particular spout height would have been an obvious matter of design choice since it was well known to provide either equal heights or a shorter spout for assembled compartment dispensers holding viscous liquids. One would be substituting one spout design for another.

Claims 15 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ness (US 5753289) as applied to claims 1 and 22 above, further in view of Newarski (US5727679).

Ness is silent in teaching a membrane over the spout. However, Newarski who also teaches assembled two compartment containers holding milk and cereal, is relied on as evidence of the conventionality of using a membrane barrier with the milk compartment (Column 3, lines 14-33). Therefore it would have been obvious to include a membrane on the spout since one would have been substituting one milk compartment package feature for another for the same purpose: provide assembled cereal and milk compartments.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (US 47148417) in view of Binter (US 5735422).

Regarding claim 40, as discussed above in the rejection of claim 38, Simmons teaches filling dispensing a first consumable into a first compartment and second consumable into a second compartment. The intent of the container design is to provide two components separately, but which may be used together (Column 1, lines 45-54, Column 2, lines 35-45). However, Simmons is silent in teaching the second compartment is assembled to the first compartment *after* the second dispensing the second component. Binter are relied on as evidence of the conventionality of assembling two compartments after a second compartment has been filled for containers comprising two components that may be used together but are packaged separately (Column 3, lines 48-65). Therefore, it would have been obvious to assemble the two compartments after dispensing a second component since one would have been substituting one method of assembling for another for a two-compartment dispenser.

Claims 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness (US 5753289) as applied to claim 38 and 42, further in view of Newarski (US5727679).

Although Ness teaches milk can be supplied in one the compartments and refrigerated until use, while cereal can be supplied in the other compartment and stored on a shelf until use (Column 4, lines 53-67), Ness is silent teaching aseptically sterilizing

the milk, as recited in claim 38 and dispensing into an aseptically sterilized container as recited in claim 42.

Newarski also teaches assembled two compartment containers holding milk and cereal. Newarski recognizes that these separate self contained milk and cereal compartments are well known. Newarski further teaches the milk compartments are known to be either refrigerated, like Ness, or aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47). Newarski is relied on as evidence of the conventionality of aseptically sterilizing the milk and dispensing it into an aseptically sterilizing into the compartment so that liquid milk compartment can be conveniently stored along with the cereal compartment (Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-33) , as opposed to stored separately as taught by Ness.

Therefore, it would have been obvious to aseptically sterilize the milk, as recited in claim 38 and dispense it into an aseptically sterilized container as recited in claim 42, since this would allow make both compartments shelf stable and thus could be stored together. Furthermore, one would have been substituting one method of dispensing milk into a compartment for another for the same purpose: provide an assembled cereal and milk compartment set.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12,16-28,32-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 09/781,583 in view of Ness (US 5588561).

Application '583 recites a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow , a liquid consumable product in one compartment , a dry consumable product in the other compartment , wherein the products are contained separately and wherein the dry consumable product is cereal (See claims 1-23). However, '583 does not recite the particular dimensions/shape of the container and individual compartments, and '583 does not recited milk as the liquid product.

Ness teaches a two-compartment container wherein the compartments are connected in a side-by-side fashion , and wherein the products held separately therein are milk and cereal, as recited in claims 18, 19,20,21,34,36,37(Abstract, Figure 3). Ness shows two arcuate side by side compartments (items 16,18 of Figure 3) holding foods, as recited in claim 35, wherein the upper tapered section (i.e. threading of 24 in Figure 3) forms a concave mouth (upper portion of 18) which abuts and wraps around a

convex spout (upper portion of 16), as recited in claims 1-12,22,25,26,28, one of which is substantially centered as recited in claim 22 (i.e. the spout), and the spout and mouth a circular poring region, as recited in claims 23 and 24(Abstract, Figure 3).

Furthermore, the compartments may be *secured* together as recited in claims 19,22,35 (Column 4, line 55 to Column 5, line 2). Additionally, Ness alternatively teaches a cap that seals the mouth and spout together, as recited in claims 16,17,32,33 (Feature 30 of Cap 10 of Figure 1 seals both).

Therefore, it would have been obvious to modify the container of '583 and incorporate any the aforementioned features to the container since one would have been substituting one standard two connected compartment container feature for another for the same purpose: a container for storing and dispensing cereal and a liquid consumable product in separate, but connected compartments. It would have been further obvious to include milk as the liquid product since one would have been substituting one liquid consumable product for another for the same container: a container for storing and dispensing cereal and a liquid consumable product in separate, but connected compartments.

Claims 15 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 09/781,583 in view of Ness (US 5588561) as applied to claims 1 and 22 above further in view of Newarski (US5727679) as applied to claim '583 does not recite a foil membrane on the spout, but Newarski who also teaches assembled two compartment containers holding milk and cereal, is relied on as

evidence of the conventionality of using a membrane barrier with the milk compartment (Column 3, lines 14-33). Therefore it would have been obvious to include a membrane on the spout since one would have been substituting one milk compartment package feature for another for the same purpose: provide assembled cereal and milk compartments.

Claims 1, 14, 22,30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 09/781,583 in view of Simmons (US 4148417).

Application '583 recites a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow , a liquid consumable product in one compartment , a dry consumable product in the other compartment , wherein the products are contained separately and wherein the dry consumable product is cereal (See claims 1-23). However, '583 does not recite the two compartments are side-by-side or attached by film wrap to secure. Simmons is relied on as evidence of the conventional container comprising two connected compartment for keeping the consumable goods separate and for dispensing together wherein the containers are assembled side by side and held in place by film wrap (Abstract, see Column 4, lines 3-13). Therefore, it would have been obvious to modify the container of 583 to include a side-by-side configuration secured by film wrap since would have been substituting one type of connection for another for two compartment, consumable

product dispenser wherein two consumable products are stored separately and may be dispensed together.

Claims 13 and 29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 09/781,583 in view of Simmons (US 4148417) as applied to claims 1 and 22 above, in view of Stegath (US 1363064).

'583 does not recite a spout is shorter. However, Stegath who also teaches two compartment dispensers side-by-side, is relied on as evidence of the conventionality of optionally placing a spout and mouth either at equal heights (i.e. Figure 7) or with the spout shorter than the mouth (i.e. Figure 1). Therefore, to select any particular spout height would have been an obvious matter of design choice since it was well known to provide either equal heights or a shorter spout for assembled compartment dispensers holding viscous liquids. One would be substituting one spout design for another.

Claims 38-40,42,45,46 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Ness (US 5588561).

Regarding claims 38,39,42,45,46, Application '583 recites a method of providing a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow , dispensing milk in one compartment and dispensing cereal in the other compartment, as recited in claim 42 , wherein the

products are contained separately (See claims 32-45). However, '583 does not recite the compartments are in a side-by side fashion and covering the opening of each compartment, as recited in claim 38, filling in a particular order as recited in claims 39 and 40, covering one compartment includes covering both openings as recited in claim 45, or the pour opening region is substantially centered as recited in claim 46.

Ness also teaches milk and cereal separately contained in a two-compartment container. Ness teaches providing a first and second compartment (which may include dry and liquid products, as recited in claim 42), assembled to one another in a side-by side arrangement, each tapering at an upper portion to respectively form a spout and mouth, which abut each other, filling the first and second compartments (i.e. the second and first compartment are assembled before dispensing the second consumable product as recited in claim 39) and covering the centered mouth and the spout with a cap as recited in claims 45 and 46 (items 10 and 30 (Figures 1 and 3, Column 2, lines 17-27, Column 4, lines 8-39, 53-67). Furthermore Ness also teaches the compartments may be filled and stored separately, assembled and then capped, which would include assembling the second compartment to the first after dispensing, as recited in claim 40 (Column 5, lines 49-65).

Therefore, it would have been obvious to modify the method of '583 to include assembling in a side-by side fashion and covering the opening of each compartment, filling one compartment either before or after connecting, covering one compartment includes covering both openings , and providing a pour opening region that is substantially centered ,since one would have been substituting conventional steps in a

method of filling and connecting a cereal and milk compartment for the same purpose: providing a container that stores and dispenses cereal and milk separately.

Claims 41 and 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Ness (US 5588561), as applied to claim 38 and 42 above, further in view of Newarski (US5727679).

Although '583 teaches dispensing milk , '583 does not recite aseptically sterilizing the milk, as recited in claim 38 and dispensing into an aseptically sterilized container as recited in claim 42.

Newarski also teaches assembled two compartment containers holding milk and cereal. Newarski recognizes that these separate self contained milk and cereal compartments are well known. Newarski further teaches the milk compartments are known to be either refrigerated, or aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47). Newarski is relied on as evidence of the conventionality of aseptically sterilizing the milk and dispensing it into an aseptically sterilizing into the compartment so that liquid milk compartment can be conveniently stored along with the cereal compartment (Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-33) Therefore, it would have been obvious to aseptically sterilize the milk, as recited in claim 38 and dispense it into an aseptically sterilized container as recited in claim 42, since this would allow make both compartments shelf stable and thus could be stored together. Furthermore, one would

have been substituting one method of dispensing milk into a compartment for another for the same purpose: provide an assembled cereal and milk compartment set.

Claim 38 and 44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Ness (US 5588561), as applied to claim 38 above, further in view of Simmons (US 4148417).

Application '583 recites a method of providing a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow , dispensing milk in one compartment and dispensing cereal in the other compartment, as recited in claim 42 , wherein the products are contained separately (See claims 32-45). However, '583 does not recite the compartments are in a side-by side fashion and covering the opening of each compartment, as recited in claim 38, or attached by film wrap to secure the compartments. Simmons is relied on as evidence of the conventional container comprising two connected compartment for keeping the consumable goods separate and for dispensing together wherein the containers are assembled side by side and held in place by film wrap (Abstract, see Column 4, lines 3-13). Therefore, it would have been obvious to modify the method of 583 to include connected in a side-by-side configuration secured by film wrap since would have been substituting one type of connection for another for two compartment dispenser wherein two consumable products are stored separately and may be dispensed together.

This is a provisional obviousness-type double patenting rejection.

**Conclusion**

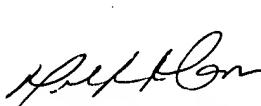
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rigney et al. (US 5607072), Davis (US 286338), Gold et al (US 3729553, and Hanneman (US 6079586) teach assembled compartments of edible consumable products. Pardo (US 4196808), Gerhart et al. (US 5954213), and Jaarsma (US 4277000) teach assembled compartments of non-edible consumer products. Smith teaches the convex compartment with a concave compartment for two different products that are separated during storage and combined for consumption

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
April 17, 2002

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
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